

Filed 3/20/08 by Clerk of Supreme Court
IN THE SUPREME COURT
STATE OF NORTH DAKOTA

2008 ND 46

Daniel Mulske, Petitioner and Appellant

v.

State of North Dakota, Respondent and Appellee

No. 20070245

Appeal from the District Court of Stark County, Southwest Judicial District,
the Honorable William A. Herauf, Judge.

AFFIRMED.

Per Curiam.

Kent M. Morrow, 411 N. 4th St., P.O. Box 2155, Bismarck, N.D. 58502-2155,
for petitioner and appellant; submitted on brief.

James A. Hope, Assistant State's Attorney, P.O. Box 130, Dickinson, N.D.
58602-0130, for respondent and appellee; submitted on brief.

Mulske v. State

No. 20070245

Per Curiam.

[¶1] Daniel Mulske appeals from a district court order denying his application for post-conviction relief.

[¶2] A district court criminal judgment was entered after Mulske was convicted of theft in 2006. Mulske appealed the judgment. We affirmed, concluding Mulske made a knowing and voluntary waiver of his right to testify, and the record on appeal did not support Mulske's allegation of attorney misconduct. See State v. Mulske, 2007 ND 43, 729 N.W.2d 129.

[¶3] Mulske applied for post-conviction relief, arguing his trial attorney provided ineffective assistance. Following an evidentiary hearing, the district court entered an order denying Mulske's application for post-conviction relief. Mulske appeals, arguing his trial counsel was ineffective because he was inadequately prepared for Mulske's preliminary hearing regarding the theft charges. Mulske also argues that his counsel refused to allow him to effectively participate in jury selection. Mulske further contends that his trial attorney refused to permit him to testify at trial.

[¶4] We affirm the district court's order under N.D.R.App.P. 35.1(a)(6), concluding the district court denial of Mulske's application for post-conviction relief is supported by the record, and under N.D.R.App.P. 35.1(a)(7), concluding our decision in State v. Mulske, 2007 ND 43, 729 N.W.2d 129, is controlling regarding Mulske's argument that his trial attorney refused to permit him to testify at trial.

[¶5] Gerald W. VandeWalle, C.J.
Mary Muehlen Maring
Carol Ronning Kapsner
Dale V. Sandstrom
Daniel J. Crothers